

Notice of Allowability	Application No.	Applicant(s)	
	10/090,471	HUTCHINSON ET AL	
	Examiner	Art Unit	
	Michael C. Miggins	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1/10/05.
2. ☒ The allowed claim(s) is/are 1-7, 9-16, 24-28 and 30-38.
3. ☒ The drawings filed on 04 March 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>02172005</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

Michael C. Miggins
Patent Examiner
EAU 1772
[Signature]

[Handwritten mark]

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Karoline Delaney on 2/15/2005.

The application has been amended as follows:

In the claims:

In claim 24, line 2, after "said body portion" the term "comprising" has been deleted and the phrase - - consists of - - has been inserted in place thereof.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

With regard to instant claims 1, 10 and 24, the reason for allowance is applicant's recited laminate, container or preform consisting of two layers, a first layer comprising polyethylene terephthalate having an isophthalic acid content of at least 2% by weight, and a second layer directly bonded to the first layer which comprises a thermoplastic material selected from the group consisting of copolyester barrier materials, phenoxy-type thermoplastics, polyethylene naphthalate, polyethylene naphthalate copolymers, polyethylene naphthalate/polyethylene terephthalate blends, and combinations thereof.

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The closest prior art is Hirose et al. (U.S. Patent No. 4,844,987) and Collette et al. (U.S. Patent No. 5,628,957).

Hirose discloses a hollow-molded body which has a first layer of a polyamide which may contain a polyethylene terephthalate comprising up to 20 mole% isophthalic acid and a second layer of polyethylene terephthalate. However, Hirose does not teach that the second wall comprises a thermoplastic material selected from the group consisting of copolyester barrier materials, phenoxy-type thermoplastics, polyethylene naphthalate, polyethylene naphthalate copolymers, polyethylene naphthalate/polyethylene terephthalate blends, and combinations thereof.

Collette et al. teach a three layer structure comprising inner and outer layer of a polyethylene naphthalate/polyethylene terephthalate blend and a core layer of polyethylene terephthalate containing up to 10% by weight isophthalic acid. However, the invention of Collette is three layer structure, applicant uses the term "consisting" and the claims recite that only a two layer structure is possible.

One of ordinary skill in the art would not have been motivated to combine Hirose and Collette without impermissible hindsight to arrive at applicant's claimed invention because there is no suggestion by either reference make applicant's recited laminate, container or preform consisting of two layers comprising the materials recited by applicant especially since Collette only teaches a three layer structure.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is (571) 272-1494. The examiner can normally be reached on Monday-Friday; 1:30-10:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCM
February 17, 2005

Michael C. Miggins
Examiner
Art Unit 1772

